

III. DESCRIPTION OF THE TRANSACTION

A. The Wireless Properties Being Contributed to Newco

This transaction combines the current domestic mobile wireless operations of SBC and BellSouth. Both plan to contribute to Newco almost all of their substantial cellular and PCS businesses. BellSouth also will contribute authorizations for 900 MHz SMR services that are used to operate its mobile data network. The other authorizations to be contributed to Newco, for fixed microwave services, experimental services, private land mobile radio services and international Section 214 authorizations, are all incidental to the CMRS businesses being contributed.

Authorizations relating to paging, wireless video and fixed wireless services are not part of the transaction and are not being contributed. Nor are microwave and other wireless authorizations that are incidental to lines of businesses (e.g., landline local exchange service) that are not part of the venture. In addition, as discussed below, certain CMRS authorizations that will be divested prior to the closing of this transaction (in order to ensure that the Applicants comply with the Commission's cellular cross-ownership and spectrum cap rules, or for other reasons) will not be transferred to Newco. Finally, due to contractual and other restrictions involving a handful of licenses owned or attributable to SBC and BellSouth, the interests in those licenses will not be contributed to Newco at this time.⁴

⁴ BellSouth is not contributing at this time its interests in cellular and microwave licenses in the Los Angeles, Houston and Galveston MSAs, as well as in Texas RSA 21. Those interests are discussed in detail in Part VI.B., below. In addition, SBC is not contributing its interests in cellular and microwave licenses in Arkansas RSAs 1-8, 10 and 12, or in the Pittsburgh, Pine Bluff, Arkansas and Worcester, Massachusetts MSAs. Finally, as discussed in Part VI.A below, SBC will not contribute its interests in certain

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B. Newco's "Footprint"

The purpose of this transaction is simple and straightforward: to expand the wireless footprints of SBC and BellSouth in order to enhance their ability to compete effectively with the current five national wireless carriers. Today, SBC's wireless operations cover approximately 120 million pops, and BellSouth's operations cover approximately 57 million pops. By contrast, each of the five existing national wireless carriers has licenses covering areas exceeding 200 million pops, and three – AT&T, Sprint PCS and Nextel – have 250 million pops or more.⁵ Combining SBC's and BellSouth's CMRS operations will create a carrier with a coverage (net of divestitures) of approximately 175 million pops, including 40 of the 50 top markets.⁶ Since Newco's

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cellular and microwave licenses, as well as a PCS license, formerly controlled by Radiofone, Inc. Those interests will be divested before closing.

⁵ See VoiceStream Wireless Corporation, *VoiceStream: About Us: Company Overview*, available at <<http://www.voicestream.com/about/company.htm>> (visited Apr. 14, 2000); Vodafone AirTouch Plc and Bell Atlantic Corporation, Application for Transfer of Control, File Nos. 0000032969 et al., at 11 (filed Oct. 14, 1999); Verizon Wireless, Bell Atlantic Corporation, and Vodafone AirTouch Plc Press Release, *Bell Atlantic and Vodafone AirTouch Launch Verizon Wireless*, Apr. 4, 2000, available at Westlaw, 4/4/00 PR Newswire 07:48:00; AT&T Corp. Press Release, *AT&T Announces Plans to Create a New Wireless Company*, Dec. 6, 1999, available at <<http://www.att.com/press/item/0,1354,2321,00.html>> (visited Apr. 14, 2000); Duff & Phelps Credit Rating Co., *Nextel's Convertible Senior Note Offering Rated 'B+' by DCR*, Jan. 26, 2000, available at Westlaw, 1/26/00 PR Newswire 13:46:00; Sprint PCS, *Sprint PCS – Newsroom – Facts-at-a-Glance*, available at <<http://s3.sprintpcs.com/news/Facts-at-a-Glance.html>> (visited Apr. 14, 2000).

⁶ Although VoiceStream's system is not fully built out, the other current near national carriers already have the ability to reach large numbers of customers. AT&T had licenses covering 94% of the population by the end of 1999. See AT&T S-3 at 52. Similarly, when GTE's wireless operations are added to Verizon Wireless it will serve 90% of the population in 96 of the top 100 markets, and Nextel already reaches 96 of those markets. See *Nextel Partners Launches Three-In-One Wireless Service in Iowa*, Business Wire 07:19:00 May 3, 2000; Leslie Cauley, *Bell Atlantic, Vodafone Plan IPO of Venture*, Wall St. J., Apr. 5, 2000, at B8.

authorizations will cover fewer pops than the other major carriers, it will continue filling out its footprint through FCC auctions and other acquisitions.

As discussed below, the coverage areas of SBC and BellSouth are highly complementary, with only minimal overlaps. SBC provides wireless coverage in the Southwest, the West Coast, the Midwest and the Northeast. BellSouth serves the Southeast and certain other markets – and it also manages the A band cellular system in one of the country's largest markets – Houston – which is in SBC's region but where SBC does not currently have facilities.⁷ Thus, the joint venture creates an additional carrier whose footprint approaches near national coverage more efficiently than either SBC or BellSouth could accomplish on its own given the scarcity of available spectrum and the time and expense of building out nationwide facilities.⁸

C. The Ownership and Control of Newco

Newco is a limited liability company. It will be owned approximately 60% by SBC and 40% by BellSouth, reflecting the value of the assets they will contribute to the venture. An additional entity ("Manager") will manage Newco and will also own a minimal interest in Newco.⁹

Manager will be owned and controlled equally by SBC and BellSouth. Thus, although the economics of Newco will be split on a 60/40 basis between SBC and

⁷ As discussed below, SBC has a small, non-controlling interest (of approximately 2%) in the B band cellular carrier in Houston that it will be selling in connection with this transaction.

⁸ See Sigman Aff. ¶ 9.

⁹ The legal name of Newco is Alloy LLC; the legal name of Manager is Alloy Management Corp.

BellSouth, control will be equally shared. Any disputes regarding significant management decisions will be referred to a "Strategic Review Committee" within Manager, and SBC and BellSouth will each have two of the four seats on that committee. The committee may act only by a two-thirds vote, meaning that SBC and BellSouth will, as a practical matter, have to reach consensus.

IV. THE STANDARD OF REVIEW

To approve the transfer to Newco of ultimate control of SBC's and BellSouth's wireless FCC authorizations, the Commission must find that the transfers are consistent with the public interest, convenience and necessity. See 47 U.S.C. §§ 214, 310(d). In making that finding, the Commission considers (i) what markets may be affected by the transaction, (ii) whether the transaction will harm competition in any of those markets and (iii) whether the transaction will yield affirmative public interest benefits.¹⁰ The Commission must also determine whether SBC and BellSouth, and thus Newco, are qualified to control these FCC authorizations – a fact about which there can be no question.

Many transfer applications on their face involve no violation of the Communications Act or the Commission's Rules; no issue under the competitive component of the public interest standard; and no basic qualification issue. Like a

¹⁰ See In re Applications of Vodafone, AirTouch, Plc and Bell Atlantic Corp., DA 99-2451, DA 00-721, *Memorandum Opinion and Order*, __ FCC Rcd. __, ¶ 25 (WTB/IB Mar. 30, 2000) ("Bell Atlantic/Vodafone"); In re Applications of Aerial Communications, Inc. and VoiceStream Wireless Holding Corp., DA 00-730, *Memorandum Opinion and Order*, __ FCC Rcd. __, ¶ 30 (WTB/IB Mar. 31, 2000) ("VoiceStream/Aerial").

number of other recent consolidations between wireless carriers, this is such a transaction. Thus, the Commission should approve the transfer applications expeditiously, especially since this transaction, once approved and consummated, will immediately enhance nationwide wireless competition.

V. THIS JOINT VENTURE WILL SERVE THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

A. The Development of National Wireless Competitors

The agreement of SBC and BellSouth to enter a joint venture for CMRS service is simply the continuation of the trend – which the Commission has acknowledged, encouraged and repeatedly approved – towards the creation of facilities-based wireless carriers with near-national footprints. As shown by the great success of single rate plans, wireless customers are demanding nationwide service at affordable rates. It is difficult for carriers to offer such rate plans economically, however, if they do not have a national, facilities-based footprint and thus have to pay high roaming charges to other carriers. As a result, carriers are assembling national networks in order to meet the needs and demands of customers. Integrated networks also allow carriers to offer consistent features across markets, including easier provision of wireless data services, so that consumers will have uniform service features, as well as uniform rates.¹¹ As discussed

¹¹ See Sigman Aff. ¶¶ 4-5; Feidler Aff. ¶¶ 2-5. Statements by both industry observers and other carriers attest to these trends. See Morgan Stanley Dean Witter, Global Telecommunications Primer at 10 (June 1999) (“Morgan Stanley”) (noting that “owning networks provides more flexibility with national pricing plans, since carriers are not subject to the typically higher roaming rates charged by other carriers”); AT&T S-3 at 8, 42 (noting that “single rate pricing ... is simplifying customer choice, increasing penetration and leading to industry consolidation,” reporting that 74% of 1998 customers signing up for AT&T’s single rate were new to AT&T Wireless, and stating that its

below, the Commission has specifically recognized that single rate national pricing plans serve the public interest.

The result of these demands has been the creation of five national wireless carriers: AT&T Wireless, Sprint PCS, Verizon, Nextel and VoiceStream. It is axiomatic that companies like SBC and BellSouth must expand their footprints as well.

**B. The Joint Venture Will Serve the Public Interest by Creating
a New National Competitor in Wireless Services**

As the Commission has repeatedly found, the public interest is well served by transactions like this one that expand the footprints of CMRS carriers. For example, in Bell Atlantic/Vodafone, the Commission stated:

We agree with Applicants that the creation of another nationwide wireless competitor constitutes a clear, transaction-specific public interest benefit. We also concur with Applicants that this alliance should enable them to realize significant cost savings, including incremental cost savings to subscribers from the reduction of roaming charges.

Id. ¶ 33. Similarly, in VoiceStream/Aerial the Commission concurred in the applicants' claim that "all mobile phone users needing access throughout the nation will benefit significantly from the creation of another competitor with a near-nationwide footprint."

Id. ¶ 44. In addition, in its Vanguard decision, the Commission stated:

We find that this merger should accelerate AT&T's ability to provide expanded service coverage using its own facilities. This merger will fill in gaps in AT&T's operational footprint.... As a direct result, AT&T will

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integrated network resulted in "improved quality and consistent features regardless of location").

likely incur lower costs through inter-firm payments associated with roaming by AT&T customers on other carriers' networks. This consideration is important to AT&T's effort to support its uniform nationwide pricing plans. We have observed that this initiative has eliminated – roaming and long distance charges to the obvious benefit of affected subscribers. We conclude that, on balance, Applicants have demonstrated that these transfers serve the public interest.¹²

This case is indistinguishable from these recent cases, and the same result is appropriate here. Neither SBC nor BellSouth standing alone currently has the scope of the existing five national carriers. Indeed, even after the transaction is completed, Newco will rank only as the sixth and smallest national carrier in terms of population coverage. Still, the creation of a new national competitor by combining SBC's and BellSouth's complementary coverage areas will clearly enhance competition among the major carriers.

¹² In re Applications of Vanguard Cellular Systems, Inc. and Winston, Inc., DA 99-481, *Memorandum Opinion and Order*, 14 FCC Rcd. 3844, ¶ 24 (WTB Mar. 11, 1999). Other Commission decisions approving the creation of regional cellular systems have confirmed the public benefits of expanded footprints. See, e.g., In re Application of 360° Communications Co. and ALLTEL Corp., DA 98-2637, *Memorandum Opinion and Order*, 14 FCC Rcd. 2005, ¶ 41 (WTB Dec. 30 1998); In re Applications for the Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp. to SBC Communications Inc., FCC 98-276, *Memorandum Opinion and Order*, 13 FCC Rcd. 21292, ¶¶ 44-45 (Oct. 23, 1998) ("SBC/SNET"); In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., DA 95-1129, *Order*, 10 FCC Rcd. 13368, ¶¶ 45-46 (WTB May 19, 1995) (citing In re Application of Corpus Christi Cellular Tel. Co., DA 88-428, *Memorandum Opinion and Order*, 3 FCC Rcd. 1889, ¶ 19 (MSD Apr. 4, 1988) ("In addition to McCaw's public interest statement to the effect that regional systems . . . are in the public interest, such conclusion had previously been confirmed by the Commission, by the experience of large wireline operators and by McCaw's own experience in other regional clusters nationwide."); see also In re Application of Madison Cellular Tel. Co., DA 87-1207, 2 FCC Rcd. 5397, ¶ 4 (Aug. 28, 1987).

The public interest benefits of this joint venture will not be limited to larger calling scopes and an enhanced ability to offer rates that reflect substantial savings due to reductions in roaming charges. Integrating the networks of SBC and BellSouth will also allow them to provide uniform service features across a wider area. In particular, such integrated networks are critical to the efficient provisioning of wireless data services.¹³ Moreover, the fact that SBC and BellSouth already use compatible technologies (TDMA and GSM)¹⁴ in most of their markets will not only facilitate the integration of their networks, it will also make it easier for their customers to use their phones outside the United States. The Commission recognized and relied upon this public interest benefit in approving the merger of VoiceStream and Aerial.¹⁵

A number of other factors will assist this new carrier in competing with the five existing national carriers. Both SBC and BellSouth have proven track records in the provision of wireless service, as reflected by the fact that the joint venture will have more customers at its inception than any other wireless carrier except Verizon Wireless, despite having a coverage area that has more than 50 million fewer pops. Given this past history of success, the wireless venture will obviously be well qualified to compete vigorously with the other national carriers.

¹³ See Sigman Aff. ¶ 7; Feidler Aff. ¶ 6.

¹⁴ Although some SBC markets (i.e., those acquired in the Ameritech merger) currently use CDMA, they are being converted to TDMA.

¹⁵ See VoiceStream/Aerial ¶ 44 ("Moreover, the combination of VoiceStream and Aerial will also provide more U.S. consumers with the opportunity to subscribe to a carrier that accommodates international roaming access, where GSM technology often prevails.")

Moreover, SBC and BellSouth intend for Newco to take further steps to strengthen its competitive position. SBC and BellSouth have agreed to use Newco should they bid in upcoming spectrum auctions to acquire the spectrum needed to fill the remaining holes in the combined service areas. SBC and BellSouth also anticipate that Newco will be active in acquiring spectrum in the secondary market as well. To this end, the joint venture will have its own capital structure, which will allow it to raise capital for both geographic expansion and product development.¹⁶ Thus, the joint venture will have ready access to all of the resources it will need to compete on a national level with the other major wireless carriers.

C. The Joint Venture Will Result in Other Synergies and Efficiencies That Will Benefit the Public

In addition to achieving the geographic scope necessary to compete more effectively on a nationwide scale, saving money on roaming and reaping the benefits of integrated networks, the joint venture will generate a number of other synergies and efficiencies that will lower its costs, enhance its ability to compete and benefit the public. Combining Applicants' operations will inevitably bring cost savings due to economies of scale.¹⁷

¹⁶ As noted above, Newco will be managed by Manager, which has been established as a corporation to facilitate its ability to raise capital.

¹⁷ See Sigman Aff. ¶ 8; Feidler Aff. ¶ 5. In approving similar recent transactions, the Commission has acknowledged that such cost savings are likely to occur and to promote efficiency. See Vodafone/Bell Atlantic ¶ 33 (“[T]he savings purportedly derived by realizing economies of scale could reasonably be expected to reduce the marginal costs of providing wireless services”); VoiceStream/Aerial ¶ 44 (noting that, while the applicants had not offered a specific factual basis for their claims of economies of scale, those claims were “certainly plausible”). Others have also noted the existence of significant economies of scale in this area. See Morgan Stanley at 10 (“Large carriers can exert

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The joint venture will also be able to take advantage of the best practices and wireless products of the two companies. For example, BellSouth Wireless Data is the only entity currently providing integrated nationwide wireless communications services to the public in the 900 MHz SMR band. The network is comprised of more than 1800 base stations and covers more than two-thirds of the entire population of the United States. Over the past decade, BellSouth Wireless Data has driven the development of highly innovative end-user products and services that are redefining the way in which its customers access, manipulate and transmit information on the move. Its customers do not roam because its extensive network is seamless, and its system permits businesses, individuals and public sector organizations to enjoy a wide range of applications, including computer-aided dispatch, workforce automation, remote database access, remote order entry, credit transaction verification, and telemetry. The combination of SBC's and BellSouth's wireless markets will join this product with SBC's extensive marketing resources, creating value that neither company could create alone.

VI. THE JOINT VENTURE WILL HAVE NO ANTICOMPETITIVE EFFECTS

A. The Parties Will Take Appropriate Actions to Comply with the Cellular Cross-Ownership and Spectrum Cap Rules

As noted above, there are very few overlaps between SBC's and BellSouth's wireless markets; indeed, the existence of such complementary coverage areas shows

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negotiating leverage on handset and infrastructure equipment manufacturers, as well as on wholesale long distance providers and on roaming charges where they don't own networks. A nationwide network helps a carrier by spreading marketing and operating costs over a bigger base of subscribers.").

why the venture is a good way to create a new national competitor. In fact, there are only seven markets in which there are overlaps that implicate either the cellular cross-ownership rule or the spectrum cap: New Orleans, Baton Rouge, Louisiana RSAs 6, 8 and 9 (all of which are cellular/cellular overlaps), and Indianapolis and Los Angeles (both of which are cellular/PCS overlaps).¹⁸ With the exception of Los Angeles, which is discussed below, all of these overlaps that implicate the Commission's Rules will be resolved by the sale of SBC spectrum prior to closing. In the case of the Louisiana overlap markets, SBC will divest its CMRS and related authorizations, so there will be no cross-ownership. In the case of Indianapolis, where SBC owns a 30 MHz PCS license and BellSouth controls various A band cellular and related authorizations, SBC plans to

¹⁸ A chart giving detailed information regarding these overlaps is attached as Attachment C. There are other markets involving minor overlaps that do not implicate the Commission's cross-ownership or spectrum cap rules. For example, in the Houma-Thibodaux, Louisiana market, SBC owns the A band cellular license and BellSouth owns a 10 MHz PCS license. This overlap does not create any competitive concerns. Combining these authorizations in the joint venture will result in the ownership of only 35 MHz of spectrum, well below the cap. Moreover, since there are several other CMRS licensees in this market, including Sprint PCS, PrimeCo and MobileTel, there is no basis for concluding that combining these two authorizations would create any competitive issues. In Houston, there is an overlap between BellSouth's interest in the A band license and SBC's interest of just over 2% in the B band. Although there is no issue under the Commission's cellular cross-ownership rule, as recently amended, SBC nevertheless plans to divest that 2% interest. In Hammond, Louisiana, SBC controls a 10 MHz PCS license, while BellSouth controls the B band cellular licensee for Louisiana RSA 7. Although this overlap does not raise any issues under the spectrum cap, SBC nonetheless is pursuing divestiture of its PCS license. In Pittsburgh, SBC holds a minority, non-controlling interest in the A band cellular license, which will not be contributed to Newco, and BellSouth has an indirect and de minimus (less than 2%) interest in the B band cellular license that will be contributed to Newco.

sell 20 MHz of its PCS spectrum, which will bring Newco well under the spectrum cap in those market areas.¹⁹ Thus, none of these markets raises any competition issues.

B. A Brief Waiver Of The Spectrum Cap's Divestiture Requirement For A Single Market (Los Angeles) Is Warranted Because It Will Facilitate Nationwide CMRS Competition

Pursuant to Sections 1.3 and 1.925 of the Commission's rules,²⁰ the Applicants hereby apply for one limited waiver of the divestiture requirement contained in the CMRS spectrum cap rule.²¹ The waiver is limited in that it would be of short duration. It is needed, however, to facilitate Newco's ability to function as a new, nationwide CMRS competitor.

Combining the SBC and BellSouth CMRS operations into a new joint venture involves the transfer of more than 2,300 FCC licenses, yet the plan for this joint venture would result in the 45 MHz spectrum cap being exceeded in only a *single* market — Los Angeles — and for only a brief period. As described below, under a partnership with AT&T covering the Los Angeles, Houston and Galveston markets, BellSouth has certain pre-existing election rights, which ripen on December 13, 2000 ("Election Date") and which will allow Applicants to come into compliance with the spectrum cap shortly thereafter. Applicants thus request a waiver authorizing them to close the instant transaction — whereby SBC would contribute to Newco its entire PCS authorization for

¹⁹ Moreover, there is no competitive harm here either since there are several other carriers operating and since the number of competitors will remain the same after SBC sells part of its PCS spectrum.

²⁰ 47 C.F.R. §§ 1.3, 1.925.

²¹ See 47 C.F.R. § 20.6(e).

the Los Angeles MTA, while BellSouth would continue to hold, briefly, its interest in the Los Angeles cellular system – subject to the condition that Newco cure the Los Angeles overlap no later than January 27, 2001, 45 days after the Election Date. This 45-day period is needed to ensure sufficient time for the election to be made and the necessary transfer applications to be prepared and filed.²²

**1. Recent Divestiture Waivers of the Spectrum Cap Rule
Are Based on Promoting Nationwide Service and
Competition**

Under Section 20.6(a) of the Commission's Rules, no entity may hold an attributable interest in more than 45 MHz of broadband CMRS spectrum in any MSA.²³ In the context of transfer applications, absent a waiver, any divestitures necessary to stay within the spectrum cap generally must occur prior to consummation of the transfers.²⁴

In September 1999, the Commission reassessed the need for a spectrum cap. Although it declined to eliminate the cap,²⁵ the FCC liberalized the restriction to permit licensees to hold up to 55 MHz of broadband CMRS spectrum in rural areas²⁶ and

²² See 47 C.F.R. § 20.6(e)(4)(i). The filing of the transfer applications will bring the Applicants into compliance with the spectrum cap.

²³ 47 C.F.R. § 20.6(a).

²⁴ See 47 C.F.R. § 20.6(e)(1), (e)(4).

²⁵ See 1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, FCC 99-244, *Report and Order*, __ FCC Rcd. __, ¶¶ 20-27 (Sept. 22, 1999) ("1999 Spectrum Cap Order"). The Commission indicated that it would revisit the need for the cap during its biennial review this year and two Commissioners have stated that they believe the cap should be eliminated. *Id.* at ¶ 4 and Separate Statements of Commissioners Furchtgott-Roth and Powell.

²⁶ See 1999 Spectrum Cap Order ¶¶ 20-27.

specifically ruled that waivers would be entertained where an interest in overlapping CMRS licenses would not be anticompetitive and would serve the public interest.²⁷

In the recent VoiceStream/Omnipoint and VoiceStream/Aerial decisions, the Commission found that these criteria were satisfied for divestiture waivers because the transactions furthered the development of an additional nationwide CMRS system. In other words, VoiceStream was permitted to exceed the spectrum cap for a brief period in order to promote nationwide service and competition.²⁸ In VoiceStream/Omnipoint, waivers were needed to cure spectrum cap problems in *eighteen* markets; in VoiceStream/Aerial, waivers were necessary for *twenty-four* markets.

²⁷ See id. ¶¶ 52, 127. Under Section 1.3 of the Commission's rules, any provision of the rules may be waived "if good cause therefor is shown." 47 C.F.R. § 1.3. Good cause is shown and waivers are appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. See WAT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). The Commission may grant a request for waiver upon a showing that:

The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

47 C.F.R. § 1.925(3).

²⁸ See In re Applications of VoiceStream Wireless Corp. or Omnipoint Corp. and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM II PCS, LLC, FCC 00-53, *Memorandum Opinion and Order*, 15 FCC Rcd. 3341, ¶ 32 (Feb. 15, 2000) ("VoiceStream/Omnipoint"; VoiceStream/Aerial ¶¶ 36-38. Accord 47 U.S.C. § 151 (the purpose of the FCC shall be "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . .").

Despite the fact that these applications resulted in spectrum aggregations that exceeded the cap in 42 markets, the FCC granted the requested waivers to permit applicants 90 days after consummation of the mergers or 180 days from grant of the initial merger applications, whichever was earlier, to come into compliance with respect to the overlapping markets.²⁹ As shown below, the instant waiver request applies to only a single market, it serves the same recognized public interest benefits of promoting nationwide service and it is based on unique facts.

2. Grant of the Instant Waiver Request is Consistent with the Objective of Furthering Nationwide Competition and Is Based on Unique Facts and Circumstances

Under the current plans for wireless operations to be contributed to Newco, Newco would exceed the 45 MHz cap in Los Angeles because: (i) SBC will be contributing its Los Angeles PCS system to Newco, and (ii) BellSouth's existing minority equity interest in AB Cellular Holding LLC ("AB Cellular"), the licensee for the A Block cellular system in Los Angeles, will be attributable to Newco.³⁰ A brief divestiture waiver is needed to close the Newco transaction, which will create a new, near nationwide CMRS provider. Thus, Commission approval of this request will promote the same important public interest benefits the FCC lauded in the recent VoiceStream

²⁹ See VoiceStream/Omnipoint ¶ 32; VoiceStream/Aerial ¶ 38. Because the two transactions involved VoiceStream's attempts to become a nationwide provider, the 180-day period granted by the Commission for divestiture ran from grant of the initial VoiceStream/Omnipoint decision. A new 180-day period was not granted for the Aerial divestitures.

³⁰ BellSouth holds a 45% equity interest in AB Cellular, and AT&T holds the remaining 55% equity interest. Both parties have negative control over AB Cellular. However, AT&T manages the Los Angeles system, and BellSouth manages the AB Cellular systems in Houston and Galveston.

decisions. Here, however, Applicants seek a waiver of the spectrum cap with respect to *only one* market, not forty-two, as were sought in the VoiceStream transactions.

Moreover, grant of the requested waiver will not adversely affect competition during the brief divestiture period. In essence, the waiver merely preserves the *status quo*. Pursuant to a management agreement, AT&T already runs the day-to-day operations of the Los Angeles cellular system. In fact, in March 1999, AT&T rebranded the cellular service offered by AB Cellular in Los Angeles as AT&T Wireless service. Thus, the grant of this waiver will ensure that current subscribers of AB Cellular in Los Angeles are not inconvenienced in any way.

Unlike the relief requested by applicants in the other divestiture cases, the waiver sought here has the advantage of being tied both to a date certain (January 27, 2001) and an identified buyer who is clearly qualified. As noted above, BellSouth's interest in the A band cellular license in Los Angeles is held through AB Cellular. Pursuant to the AB Cellular Formation Agreement, there are redemption provisions that give BellSouth 30 days from December 13, 2000 to elect one of the following three options:

- Option 1: Redeem AT&T's interest in AB Cellular by distributing the Los Angeles property to AT&T and obtain complete control of AB Cellular and its remaining cellular properties in Houston and Galveston;
- Option 2: Partially redeem BellSouth's interest in AB Cellular where BellSouth receives the cash contributed by AT&T (or the assets purchased with that cash) and AT&T receives full managerial and operational control over AB Cellular and all the FCC licenses it holds; or
- Option 3: Redeem BellSouth's interest in AB Cellular in return for cash equal to the lesser of (i) the value of its interest at the formation of AB Cellular, plus interest, and (ii) the fair market value of its interest in AB Cellular.³¹

³¹ See Section 9.1 of the Limited Liability Company Agreement for AB Cellular Holding, LLC (November 13, 1998) ("Formation Agreement") (Attachment D hereto).

SBC and BellSouth have agreed that Newco will have the right to make this election, and they have further agreed that, within Newco, SBC has the sole right to select the option. Thus, on December 13, 2000, SBC will be able to direct the election of one of the three options. At this time, SBC anticipates choosing Option 1, which would result in AT&T holding the A band cellular license in Los Angeles and Newco obtaining control of AB Cellular and the remaining cellular licenses it holds — Houston and Galveston.

The Applicants commit that, whichever election is made, the license overlap and corresponding spectrum cap issue in Los Angeles will be cured no later than January 27, 2001. Applicants request this 45-day period to ensure sufficient time for AT&T and BellSouth to comply with the AB Cellular Formation Agreement and to provide adequate time to prepare and file the necessary transfer applications, especially given the intervening holiday period. Thus, this situation is unique in that a pre-existing agreement spells out a *date certain* upon which the divestiture process will begin and ensures that an identified and clearly qualified buyer for the divested property will be selected.

Finally, the proposed divestiture date (i) is likely to be well in advance of the outer limit afforded VoiceStream (180 days from grant of the merger applications), and (ii) may be within the 90 days from consummation deadline granted in the VoiceStream decisions. Applicants obviously would prefer the most expeditious action possible to bring the joint venture to the market, given that there already are other national CMRS carriers currently operational. As demonstrated in the table below, however, it has taken the FCC between 120 and 213 days to issue decisions with respect to recent wireless transactions designed to create nationwide CMRS providers.

**TIMELINE FOR FCC ACTION ON RECENT WIRELESS MERGER/
JOINT VENTURE APPLICATIONS**

Merger/Joint Venture	Application Filing Date	FCC Grant Date	Elapsed Time
VoiceStream/Omnipoint	July 16, 1999	February 14, 2000	213 days
Bell Atlantic/Vodafone	October 14, 1999	March 30, 2000	168 days
VoiceStream/Aerial	December 1, 1999	March 30, 2000	120 days

The average time for a decision in each of these transactions has been 167 days.

If the instant transaction is subject to a similar timeline and outcome, the anticipated grant date would be October 18, 2000. Assuming Applicants consummated the transaction within thirty days of grant, the 90 day grant period afforded applicants in the VoiceStream decisions would expire on February 15, 2001 — nineteen days later than the requested divestiture deadline. Similarly, under this scenario, the proposed divestiture date would be well within the 180 days from grant time limit — April 16, 2001. Even if the FCC released a decision within the shortest period (120 days), the proposed January 27th divestiture date still would be within the 180-day limit granted in the VoiceStream decisions.

Based on the foregoing, Applicants respectfully submit that the public interest would be served by grant of a waiver of Section 20.6(e) that authorizes them to close the instant transaction subject to the condition that they eliminate the CMRS license overlap in Los Angeles no later than January 27, 2001 or, if the Commission does not act prior to December 13, 2000, the earlier of 180 days from grant or 90 days from closing.

C. There Are No Anticompetitive Effects

Apart from the limited overlaps discussed above that implicate the Commission's Rules, and that will be cured prior to closing, there are no competitive issues that require

any consideration.³² Rather, this transaction is a simple and straightforward consolidation of wireless properties that will enhance competition for all of the reasons that the Commission has identified in numerous orders regarding the creation of regional and national wireless carriers.

In addition to creating a sixth national wireless carrier, the agreements between SBC and BellSouth preserve and enhance the ability of SBC and BellSouth to compete both with Newco and with each other. Thus, this transaction will not only add a new national wireless competitor on the day it is implemented; it would also result in the addition of two additional competitors in many markets.³³ Moreover, the formation of

³² Other than the wireless voice and data market that is the subject of this transaction, the only other arguably relevant market is the market for international services, since both SBC's and BellSouth's wireless carriers provide international service. The Commission regulates the Applicants' provision of such services on a resale basis as nondominant on all international routes, including those where BellSouth and SBC have foreign carrier affiliations. In addition, although BellSouth Wireless Data is authorized to provide facilities-based service between the United States and Canada, it too is regulated as nondominant on that route. See International Authorizations Granted, DA 99-1317, *Public Notice*, 14 FCC Rcd. 13107 (July 2, 1999). The amount of combined international traffic carried by the Applicants' CMRS affiliates is nowhere near significant enough to raise anticompetitive concerns on any international route. Moreover, the transaction will not harm competition because it will not eliminate a significant participant in the provision of international services. See Bell Atlantic/Vodafone ¶ 28; VoiceStream/Aerial ¶ 39. The Commission has determined consistently that the BellSouth wireless carriers are to be regulated on a nondominant basis. Although SBC is affiliated with several foreign carriers, the Commission has recently concluded, in approving the SBC/Ameritech merger, that these affiliations do not raise competitive concerns. See In re Applications of Ameritech Corp. and SBC Communications Inc., FCC 99-279, *Memorandum Opinion and Order*, 14 FCC Rcd. 14712, ¶¶ 527-38 (Oct. 8, 1999) ("SBC/Ameritech"). In any event, BellSouth and SBC are contributing only their wireless carriers and the international Section 214 authorizations held by those carriers to Newco.

³³ Indeed, SBC and BellSouth will not be limited to offering wireless services only through their investment in Newco. Rather, they will also be able to sell wireless services provided over Newco's facilities – in competition with Newco and with each

Newco will not limit the ability of SBC and BellSouth to compete against each other outside the wireless market. Rather, Newco will be free to offer packages of services that combine its own CMRS service with landline service. SBC and BellSouth, in turn, will be allowed to package CMRS service obtained from Newco – both resold service out of region and service offered as Newco’s agent in region – with landline and other services in order to offer packages to consumers. Thus, the formation of Newco, with its near national wireless footprint, will enhance the ability of SBC and BellSouth to serve their current and future customers. It will also enhance their ability to compete with other carriers and with each other in the provision of other telecommunications services.

Indeed, by greatly expanding SBC’s ability to offer facilities-based wireless service, the joint venture will enhance SBC’s ability to offer packages of service in several major markets that it is committed to enter pursuant to its “National-Local” Strategy and the conditions to which it agreed to in connection with its merger with Ameritech.³⁴ Thus, far from raising competitive concerns, the joint venture is strongly procompetitive.

Footnote continued from previous page
other – both in and out of region. Specifically, out of their respective regions, SBC and BellSouth will each be able to resell Newco’s service, while in region they will, at least initially, act as Newco’s agent. Both parties, however, may convert to reseller status in region after six months for national accounts or for the sale of wireless services as part of packages, and may resell stand-alone wireless service after three years.

³⁴ See Sigman Aff. ¶ 9.

VII. SBC, BELL SOUTH AND NEWCO ARE EMINENTLY QUALIFIED TO CONTROL THESE LICENSES

There can be no question as to the qualifications of SBC and BellSouth, and thus of their joint venture, Newco, to control the authorizations at issue. Each company already controls the kinds of authorizations that are being contributed to the venture by the other. The qualifications of SBC and BellSouth are well known to the Commission, which has repeatedly found that they are qualified to control the types of authorizations at issue here.³⁵ SBC and BellSouth are two of the nation's most successful cellular carriers and they also have extensive PCS operations. They both provide high quality, competitive CMRS service to their customers. Given the experience and capabilities of both SBC and BellSouth, the qualifications of Newco to control these authorizations are beyond dispute.

VIII. RELATED GOVERNMENTAL FILINGS

The Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and the rules promulgated under that Act. SBC and BellSouth

³⁵ See e.g., International Bureau and Wireless Telecommunications Bureau Grant Consent for Transfer of Control of Licenses of Cellular Communications of Puerto Rico, Inc., to SBC Communications Inc., DA 99-1654, *Public Notice*, 14 FCC Rcd. 13506 (WTB/IB Aug. 18, 1999); SBC/Ameritech ¶¶ 568-573; In re Applications of Comcast Cellular Holdings, Co. and SBC Communications Inc., DA 99-1318, *Memorandum Opinion and Order*, 14 FCC Rcd. 10604 ¶¶ 4-5 (WTB July 2, 1999) ("SBC/Comcast"); SBC/SNET ¶¶ 26-27; In re Applications of Pacific Telesis Group and SBC Communications, Inc., FCC 97-28, *Memorandum Opinion and Order*, 12 FCC Rcd. 2624, ¶ 11 (Jan. 31, 1997) ("SBC/Telesis"); FCC Public Notice, Report No. 284 (July 28, 1999). Moreover, the Commission has granted all of Applicants' renewal applications filed to date. See e.g., FCC Public Notice, Report No. 375 (Nov. 17, 1999); FCC Public Notice, Report No. CWS-99-9 (Nov. 27, 1998).

will soon submit to the Department of Justice and the Federal Trade Commission a pre-merger notification form and an associated documentary appendix. In addition, although the proposed joint venture will only operate domestically, the transaction still requires clearance from the European Commission ("EC") under its Merger Regulation.

Notification of this transaction was given to the EC on April 25, 2000. The joint venture does not present any significant competition issues for the European Union, however, and Applicants expect to obtain EC clearance in the near future.

IX. ADDITIONAL AUTHORIZATIONS

In addition to seeking the Commission's approval of the transfers of control of the FCC authorizations covered in these applications, the Applicants are also requesting the additional authorizations described below.

A. After-Acquired Authorizations

While the lists of authorizations specified in the applications for approval of the transfers of control are intended to be complete, SBC's and BellSouth's subsidiaries and affiliates that are the subject of this transaction may have on file, and may file for, additional authorizations for new or modified facilities, some of which may be granted during the pendency of these transfer of control applications. Accordingly, SBC and BellSouth request that the grant of the transfer of control applications include authority for Newco to acquire control of the following items:

- (1) any authorization issued to SBC's or BellSouth's subsidiaries and affiliates during the Commission's consideration of the transfer of control

applications and the period required for consummation of the transaction following approval;

- (2) construction permits held by such licensees that mature into licenses after closing and that may not have been included in the transfer of control applications; and
- (3) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

Such action would be consistent with prior decisions of the Commission.³⁶

B. Unconstructed Systems/Antitrafficking Rules

SBC holds three PCS authorizations that were obtained by competitive bidding within the last three years and that will be transferred to Newco in connection with this transaction.³⁷ Pursuant to 47 C.F.R. § 1.2111(a), Applicants state that there was no separate consideration assigned to these (or any other) licenses that are being transferred to Newco as part of the overall joint venture. In addition, both SBC and BellSouth have obtained authorizations to provide service in unserved areas during the last year. These authorizations do not raise any issue under 47 C.F.R. § 22.943(b) because the areas in question are being served by systems that have been in operation for more than one year.

³⁶ See, e.g., SBC/Ameritech ¶ 583; SBC/SNET ¶ 49; SBC/Telesis ¶ 93; In re Applications of Craig O. McCaw and American Tel. & Tel. Co., FCC 94-238, *Memorandum Opinion and Order*, 9 FCC Rcd. 5836, ¶ 137 n.300 (Sept. 19, 1994), *aff'd sub nom. SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir.), *recons. in part*, 10 FCC Rcd. 11786 (Oct. 30, 1995).

³⁷ These three PCS licenses were originally obtained by Comcast Corp. through competitive bidding in June 1997. SBC acquired control of these and other wireless authorizations of Comcast in July 1999.

Although virtually all of the microwave authorizations controlled by SBC and BellSouth that are the subject of the proposed transfer of control represent constructed facilities, there is a small number of authorizations for which facilities have not yet been constructed. Under § 101.55(d) of the Commission's Rules, the transfer of control of such authorizations does not implicate the Commission's antitrafficking restrictions because the transfer is incidental to the larger transaction involving the transfer of control of the ongoing CMRS businesses of SBC and BellSouth, with no separate payment being made with respect to any individual authorizations or facilities.³⁸

C. Blanket Exemptions to Cut-Off Rules

The public notice announcing the plan for Newco to acquire virtually all of the wireless licenses controlled by SBC and BellSouth will provide adequate notice to the public with respect to such licenses, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h) and 1.929(a)(2) of the Commission's Rules to provide a blanket exemption from any applicable cut-off rules in cases where SBC or BellSouth file amendments to pending applications to reflect the consummation of the proposed transfer of control.³⁹

³⁸ See SBC/SNET ¶ 49; SBC/Telesis ¶ 91.

³⁹ See In re Applications of Ameritech Corp. and GTE Consumer Servs. Inc., DA 99-1677, Memorandum Opinion and Order, __ FCC Rcd. __, ¶ 2 n.6 (WTB Aug. 20, 1999); SBC/Comcast ¶ 2 n.3.

X. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission conclude that this joint venture serves the public interest, convenience and necessity, and thus expeditiously grant the applications to transfer control of SBC's and BellSouth's FCC authorizations to Newco.